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C O N F I D E N T I A L SECTION 1 OF 2 BUENOS AIRES 7565

E.O. 12065: GDS 9/12/85 (FRIEDMAN, TOWNSEND B.)
TAGS: SHUM AR
SUBJ: (U) PRESUMPTIVE DEATH LAW GENERATES PROTECTS

REF: BUENOS AIRES 6961; BUENOS AIRES 7200

1. (U) THE GOA'S PROPOSAL FOR REDRAWING THE PROCEDURES FOR DECLARING A PRESUMPTIVE DEATH IS COMING UNDER FIRE FROM ABROAD AND REMAINS AN ITEM OF DEEP CONCERN TO SOME ARGENTINE HUMAN RIGHTS GROUPS. THE PROPOSAL IN QUESTION WAS ANNOUNCED AUGUST 22 BY INTERIOR MINISTER HARGUINDEGUY, ALONG WITH ANOTHER PIECE OF PROPOSED LEGISLATION DESIGNED TO MAKE IT POSSIBLE FOR THE HEIRS AND FAMILY MEMBERS OF DISAPPEARED PERSONS TO GAIN ACCESS TO THEIR RIGHTS AS BENEFICIARIES UNDER THE NATION'S PENSION AND SOCIAL SECURITY SYSTEMS. THIS LATTER LAW HAS BEEN PUBLISHED IN THE "DIARIO OFFICIAL" AND WE ARE TOLD IS BEING USED ALREADY BY THE RELATIVES OF AT LEAST SOME OF THE DISAPPEARED. THE OTHER BILL IN QUESTION IS STILL BEING
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CONSIDERED BY THE LEGISLATIVE ADVISORY COUNCIL (CAL).

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DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY Lucille DATE 4/9/12
PORTIONS DENIED AS INDICATED

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2. (U) THE LEGISLATION ON PRESUMPTIVE DEATH IS GENERATING CONTROVERSY PARTICULARLY BECAUSE IT ALLOWS THE ARGENTINE STATE AS WELL AS FAMILY MEMBERS OF THE MISSING PERSON TO SEEK A DECLARATION OF PRESUMPTIVE DEATH, A PROVISION WE UNDERSTAND IS UNUSUAL AND WHICH SOME PEOPLE FEAR INVITES ABUSES. THIS SALIENT ARTICLE OF THE BILL (FULL TEXT OF BOTH BILLS SEPTEL) IS THE SECOND WHICH STATES, IN PART: "THE DECLARATION OF PRESUMPTIVE DEATH...CAN BE SOUGHT EITHER BY THE SPOUSE, OR BY ANY RELATIVE, THROUGH BLOOD OR AFFINITY TO THE FOURTH DEGREE, OR BY THE NATIONAL STATE THROUGH THE MINISTRY WITH RESPECTIVE JURISDICTION. THE ACTION OF EACH OF THE FOREGOING IS PRIVATE AND CAN BE EXERCISED DESPITE THE OBJECTION OF THE OTHERS WHO ARE EMPOWERED BY THIS LAW."

3. (U) THUS, IF FAMILY MEMBERS CAN SEEK A DECLARATION OF PRESUMED DEATH DESPITE THE OBJECTION OF THE STATE, THE STATE CAN ALSO SEEK A SIMILAR DECLARATION DESPITE THE OBJECTION OF A FAMILY MEMBER. IN BOTH CASES, THE PETITIONER OF PRESUMPTIVE DEATH CERTIFICATE MUST EARLIER HAVE FILED A DECLARATION OF DISAPPEARANCE BEFORE AN OFFICIAL ARGENTINE BODY (NOT DEFINED IN THE LAW) AND HAVE DONE SO BETWEEN NOVEMBER 1974 (THE DATE THE STATE OF SEIGE WAS INSTITUTED) AND THE DATE THIS DRAFT LAW IS OFFICIALLY PROMULGATED. THE JUDGE TO WHOM THE PETITION IS MADE MUST TAKE STEPS TO VERIFY THAT SUCH A DECLARATION OF DISAPPEARANCE WAS MADE; HE MUST ALSO SEEK FURTHER INFORMATION FROM THE MINISTRY OF THE INTERIOR AND PUBLISH IN PAPERS AND THE "DIARIO OFFICIAL" OF NOTICES OF SEARCH FOR THE

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DISAPPEARED PERSON. SHOULD ALL THIS PRODUCE NEGATIVE RESULTS AFTER A PERIOD OF NINETY DAYS, THE JUDGE WOULD ISSUE A PRESUMPTIVE DEATH DECLARATION FOR THE INDIVIDUAL IN QUESTION.

4. (C) OUR HUMAN RIGHTS CONTACTS, BEFORE THEY BECAME DEEPLY INVOLVED IN THE VISIT OF THE IAHRC, VOICED CONCERN OVER POSSIBLE PERVERSION BY THE STATE OF THE POWER GRANTED IT BY THIS LEGISLATION. PERONISTS HAVE ALSO CONDEMNED IT. NEW VOICES

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FROM ABROAD ARE ZEROING IN ON THE SAME ISSUE. ACCORDING TO ONE PRESS REPORT, IN A RECENT PRESS CONFERENCE, SWEDISH FOREIGN MINISTER BLIX NOT ONLY CONDEMNED ARGENTINE DISAPPEARANCES BUT ALSO SAID THAT HIS GOVERNMENT WOULD BE "EXTREMELY SHOCKED" IF THE ARGENTINE GOVERNMENT WERE TO USE THE NEW LEGISLATION TO DECLARE THE DISAPPEARED DEAD WITHOUT ASSUMING THE RESPONSIBILITY FOR CLEARING UP THE DISAPPEARANCES.

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6. (C) COMMENT: IN THE BEST OF CIRCUMSTANCES WE UNDERSTAND DEATH LAWS PRESENT TRICKY AND THORNY ISSUES. IN ARGENTINA, WHERE THE GOVERNMENT HAS EARNED THE DISTRUST OF THOSE MOST TOUCHED BY THE PROPOSED LEGISLATION, THE MATTER BECOMES EVEN MORE DIFFICULT, PARTICULARLY WHEN THE STATE SEEMS TO BE SEEKING TO GIVE ITSELF SINGULAR POWER IN THIS MATTER.

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8. (C) WE ARE UNCERTAIN WHAZSIS HAPPENING TO THIS BILL IN THE CAL. WE HAVE HEARD ONE EXPLANATION WHICH ATTRIBUTES DELAY TO THE BILL'S BEING SUBMITTED *TO CAL WELL AFTER THE OTHER BILL HARGUINDEGUY ANNOUNCED* AUGUST 22. BUT IT IS ALSO POSSIBLE--THOUGH WE HAVE NO INFORMATION SUGGESTING THIS--THAT THE GOA IS RECONSIDERING ITS PROPOSAL IN THE LIGHT OF REACTIONS TO IT. THE CAL WORKS SLOWLY IN ANY EVENT AND CAN ALSO BE USED AS THE GRAVEYARD OF CONTROVERSIAL ISSUES. EMBASSY WILL REPORT AS WE HEAR NEWS OF THE BILL'S PROGRESS.
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